

*Before the
Federal Communications Commission
Washington, D.C. 20554*

In the Matter of)	
)	
Amendment of Parts 73 and 74 of the)	
Commission's Rules to Establish)	MB Docket No. 03-185
Rules for Digital Low Power Television,)	
Television Translator, and Television)	
Booster Stations and to Amend Rules)	
For Digital Class A Television Stations)	

COMMENTS OF LIN TV CORP. AND BANKS BROADCASTING, INC.

LIN TV Corp. ("LIN") and Banks Broadcasting, Inc. ("Banks") (jointly "Commenters"), through their attorneys, offer these comments on the Notice of Proposed Rule Making ("Notice") in the above-captioned docket. Commenters oppose the Commission's proposal to authorize digital LPTV and translator stations to operate in the auctioned lower 700 MHz band. Such operation would conflict with the rights of those who purchased the use of spectrum in the band. It would also likely lead to the establishment of many stations that will give rise to interference investigations and disputes. Those stations will ultimately have to cease operations abruptly as new services are introduced by auction winners.

1. Commenters' Interest in this proceeding. LIN owns 22 television stations, operates two stations pursuant to time brokerage agreements, and has equity investments in five stations. LIN also owns or operates 28 low-power television stations, including 22 with Class A status. LIN's interests include stations operating in the lower 700 MHz band on NTSC Channel 54 in Austin, Texas; NTSC Channel 59 in New Haven, Connecticut; and DTV Channel 54 in Providence, Rhode Island. LIN was the successful bidder in Auction

44 for the spectrum included in Channels 54 and 59 in parts or all of those three markets and holds 18 resulting station licenses. In addition, LIN was the successful bidder in Auction 49 for lower 700 MHz band spectrum in areas of Michigan, Indiana, Ohio, and Texas.¹

2. Banks is the licensee of television stations in Wichita, Kansas and Caldwell, Idaho. It was the winning bidder for the C Block frequencies derived from television Channels 54 in the Wichita area in Auction 44.² It was the winning bidder for the Channel 59 frequencies for four licenses in the Boise area in Auction 49.³

3. As both television licensees and lower 700 MHz band auction winners, LIN and Banks have a keen appreciation of the relative rights, expectations, and responsibilities of parties with interests in the band.

4. The Proposal. The lower 700 MHz spectrum (television channels 52-59) has been reallocated for new fixed, mobile, private, and broadcast services. As the Commission states (Notice, para. 26):

Stations in the LPTV service have always operated on a secondary non-interfering basis with respect to analog full-service television stations. They are also secondary to authorized DTV stations and certain land mobile radio service operations including new primary auctioned services (i.e., the

¹ See FCC Public Notice, Wireless Telecommunications Bureau Announces it Is Prepared to Grant Lower 700 MHz Band Licenses Upon Full and Timely Payment, DA 03-3548, November 6, 2003.

² See FCC Public Notice, Wireless Telecommunications Bureau Announces it Is Prepared to Grant Lower 700 Mhz Band Licenses upon Full and Timely Payment, DA 03- 3737, November 21, 2003

³ See FCC Public Notice, Lower 700 MHz Band Auction Closes/Winning Bidders Announced, DA 03-1978, June 18, 2003.

services using the reallocated TV channels 52-69). [footnotes omitted]

The Commission proposes, however, to make Channels 2 through 13 and 14 through 59 (with the exception of Channel 37) available for digital translator and LPTV stations (Notice, para. 28). Such stations would be required to operate on a noninterference basis to primary users of the channels. The Commission suggests that under this plan “digital LPTV and TV translator operations would not preclude or impede service from DTV stations or new primary services.” (Ibid.) The Commission invites comment as follows (Notice, para. 29):

In particular, we seek comment on our proposal to permit digital low power operations on TV channels 52-59. In the Channel 52-59 reallocation order, the Commission permitted LPTV and TV translator stations to operate indefinitely on these channels on a non-interfering basis and to negotiate interference agreements with new primary service providers. With regard to future filing windows, it retained “the discretion to geographically restrict or preclude altogether the filing of applications for new LPTV and TV translator stations seeking to operate on channels 52-69. Although it may be appropriate to preclude or restrict the filing of additional applications for new analog LPTV and TV translator service on these channels, we believe the use of channels 52-59 would facilitate the digital conversion of existing low power service. These channels could also provide additional opportunities for new digital stations, particularly in rural areas where new wireless and other primary services may not operate in the near future. Alternatively, we seek comment on whether we should permit use of channels 52-59 only when applicants could demonstrate that no lower channels are available for their digital operations. Should such a policy apply only with regard to applications for new digital low power service or also include applications seeking to convert existing analog operations to digital? [footnotes omitted]

5. The Commission seeks comment on whether to apply Section 74.709 of the rules, providing protection from LPTV/translator interference to private radio stations on

former UHF television Channels 14 - 20 in the vicinity of 13 large cities, to digital stations. Notably, however, it does not mention or seek comments on any methodology for protecting from interference the diverse types of lower 700 MHz band stations that will be operated by auction winners.

6. Comments. Commenters submit that the Commission should preclude the inauguration of new broadcast services, including digital services, in the band that the Commission has auctioned, regardless of whether those services would be authorized on a secondary basis. Commenters recognize that substantial parts of some of the areas awarded at auction cannot be used until the end of the transition or until the incumbent earlier vacates the spectrum voluntarily. However, voluntary relinquishment of spectrum may occur in some cases. In any event, it will be possible in the interim to introduce service in other portions of the areas awarded, and particularly in more remote, rural portions. For example, the spectrum for which Banks was the winning bidder is unencumbered by incumbent full-service broadcasters and is immediately available for new public service. It would be unfair to hamper an auction winner's use of the band by authorizing secondary broadcast entrants that are new to the band or to a particular channel. When the Commission conducted the lower 700 MHz band auctions, it reminded bidders that winners would have to protect incumbent broadcasters "already licensed and operating on frequencies that will be subject to the upcoming auction."⁴ When a bidder, such as LIN and Banks, formed an opinion as to the value of the spectrum, it factored in the chances that a channel might be cleared before the end of the DTV transition in a particular area but had

⁴ Auction 49: Lower 700 MHz Band Auction Fact Sheet, <http://wireless.fcc.gov/auctions/49/factsheet.html>.

no way to include in the calculation the concept of new broadcast users staking transitional claims.

7. The fundamental problem with introduction of new “temporary” services in the auctioned band is that it will give rise to a group, and potentially a large group, of stations that will cause interference to new services. The Commission has encouraged auction winners to introduce innovative services. However there is no method in place or proposed to predict or measure interference to the services that could be offered by the lower 700 MHz band auction licensees. Yet auction licensees will have to document interference to gain relief. To demonstrate the problems inherent in such a scheme one need look no further than the lengthy and complicated litigation that sometimes ensues when secondary LPTV or FM translator licensees cause interference to full-service stations. Here, where the interfering, secondary signal may be transmitted at much higher power than, and at some distance from, the primary signal, it could be very difficult to identify the source of destructive interference.

8. At this stage in the digital television transition an LPTV applicant or licensee proposing to move to a channel in the “doomed” 52-59 band would be seeking unsafe harbor. The Commission should refrain from adopting a policy that will lead such secondary licensees into an untenable position. In any event, there is no reason why the Commission should entertain such a proposal for areas where the spectrum at issue has been sold at auction. The FCC auctioned this spectrum subject to the wasting rights of broadcast incumbents, and not the rights of unforeseeable new broadcast users. It would be unjust and unwise to permit such unpredictable incursions into the auctioned band, to be

sorted out later at the further expense of lower 700 MHz auction licensees and the public that will benefit from their services.

Respectfully submitted,

LIN TV CORP.
BANKS BROADCASTING, INC.

By: _____
Lawrence M. Miller
miller@swmlaw.com

SCHWARTZ, WOODS & MILLER
Suite 300, The Dupont Circle Building
1350 Connecticut Avenue, N.W.
Washington, D.C. 20036-1717

Telephone: (202) 833-1700
Facsimile: (202) 833-2351

Their Attorneys

November 25, 2003